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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1714

CARLSBERG MOBILE HOME PROPERTIES, LTD. — '72,
Petitioner,

vs.

HARPER SIBLEY, JR. and THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of California.

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Respondent Harper Sibley, Jr. ("Sibley") opposes the petition for writ of certiorari of Carlsberg Mobile Home Properties, Ltd. — '72, a limited partnership ("Carlsberg"). The decision of the California Supreme Court in this case was correct and Carlsberg has not shown in its pending petition any reason why this Court should review that decision. Moreover, the California Supreme Court decision interpreted and applied state law, thus resting on adequate and independent state grounds. This Court, therefore, lacks jurisdiction.

Statement of the Case.

Statement of Facts.

In December 1974, Carlsberg filed an action in the Los Angeles County Superior Court against Sibley and others. Carlsberg alleged that the other defendants had breached an agreement relating to the operation of mobile home parks *in Georgia* and that Sibley had breached a guaranty relating to said agreement. Sibley was served by certified mail in Florida. Appearing specially, Sibley moved the Superior Court, pursuant to California Code of Civil Procedure §418.10(a)(1), for an order dismissing the action for lack of personal jurisdiction. As shown by Sibley's affidavit filed in support of the motion, Sibley does not reside in California, has no properties here, and performed no act in or relating to California in respect of the matters alleged in the complaint.

The complaint, in pertinent part, alleged:

1. Carlsberg, doing business in the State of California, entered into a limited partnership agreement with defendant Sunrise Lakes, Inc., a Georgia corporation ("Sunrise"), which formed defendant MTA-CMHPL, Ltd. ("MTA"), a limited partnership, with Sunrise as the sole general partner and Carlsberg as the sole limited partner.*

2. The principal place of business of the newly formed limited partnership, MTA, is in the State of Georgia. Under the limited partnership agreement, MTA was to acquire and operate two mobile home parks, both of which are located in Georgia.

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*Carlsberg contributed to this venture real property located in Georgia and Sunrise contributed a promissory note as well as a promise to manage and control MTA's assets.

3. Sunrise is to make monthly payments to Carlsberg pursuant to the limited partnership agreement. Sibley executed *in Florida* a written guaranty of Sunrise's performance.

4. Carlsberg, the alleged beneficiary of this guaranty, claims a breach thereof by Sibley and seeks to force Sibley to defend in California an action brought on the guaranty.

The uncontradicted affidavit of Sibley shows that his *only* connection with the matters alleged in the complaint is that he signed the guaranty. It shows, further, that Sibley did so *in the County of Monroe, Florida* in response to the request of defendant Peter Thun who brought the guaranty to Florida to present to Sibley. After signing the guaranty and having his signature acknowledged there, Sibley handed the document to Peter Thun *in Monroe County, Florida*. Sibley did not take or send the guaranty to Carlsberg in California or request Thun to do so. Indeed, there is no evidence that Sibley knew that the guaranty would be taken or sent to California by Thun or that it would induce action by Carlsberg in California.

Sibley's affidavit also shows that he is a resident of Florida, that he has never been a resident of California, that he does not own any real or personal property in California, and that he does not have any business interest or connection in California. Moreover, Sibley has not been physically present in the State of California since he was there for a day or so in January, 1973, to attend a Super Bowl game. Sibley's sole contact with the State of California—wholly unrelated to this action—is in a fiduciary capacity, in that he is one of a number of trustees

of a testamentary trust created by the will of his father, which trust owns a ranch in Cambria, California.

The *only* evidence presented by Carlsberg in opposition to Sibley's motion to dismiss was an affidavit which asserted that Sibley's guaranty induced Carlsberg to enter into the transaction with the other defendants and Carlsberg would not have executed and performed the limited partnership agreement without it.

The Decision by the California Supreme Court.

The California Supreme Court stated that this case presented the question whether California courts may constitutionally assert jurisdiction over a nonresident individual solely by reason of his execution outside of California of a guaranty regarding payment of monies to a California entity and his alleged breach thereof. That court concluded that, under the circumstances in this case—where the guaranty related to an enterprise operating solely *in Georgia* and was executed *in Florida* by a guarantor who had no other connection with the transaction—the guaranty transaction was not a sufficient basis on which to sustain personal jurisdiction over the nonresident guarantor. Thus, the action was ordered dismissed as against Sibley.

In so deciding, the California Supreme Court held that "the mere causing of 'an effect' in California . . . is not necessarily sufficient to afford a constitutional basis for jurisdiction; notwithstanding this 'effect' the imposition of jurisdiction may be 'unreasonable.'" If unreasonable, jurisdiction over a non-resident is lacking.

The California Supreme Court further held that in a case such as this, where the assertion of jurisdiction

is based on a single act of an out-of-state defendant which took place out-of-state, the exercise of jurisdiction would be constitutionally *unreasonable* because Sibley, by merely executing *in Florida* a guaranty relating to the operation of mobile home parks *in Georgia*, had not purposefully availed himself of the privilege of conducting activities in California, thus invoking the benefits and protection of its laws. The Court observed that the economic activity here involved is not the subject of special California legislation, a factor which, when present, may be deemed significant in determining the reasonableness of jurisdiction. The court held that California has no special interest in regulating the transaction involving Sibley and Carlsberg, especially since the transaction solely relates to a *Georgia* enterprise. Accordingly, it held:

> Thus, we conclude Petitioner's (Sibley) relationship to California, and the effects thereby caused in California, make the exercise of jurisdiction unreasonable in the present case.

ARGUMENT.

This Court Lacks Jurisdiction.

Carlsberg asserts jurisdiction under 28 USC §1257 (3), contending the issue is whether California could assert personal jurisdiction over Sibley without violating the due process clause of the Fourteenth Amendment, United States Constitution.

The standard for personal jurisdiction in California, as applied by the California Supreme Court, is found in California Code of Civil Procedure §410.10, which provides:

> A court of the state may exercise jurisdiction on any basis not inconsistent with the Constitution *of this state* or of the United States. (Emphasis added.)

The California Supreme Court stated that Section 410.10 manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations. The Court then considered the recognized bases for jurisdiction in California as discussed by the California Judicial Council in its comment to Section 410.10.*

The California Supreme Court applied the facts of this case to Section 410.10 as analyzed by the Judicial Council comment and as interpreted by California case law. The Court distinguished the present case from other California cases upholding jurisdiction over non-resident defendants, concluding that jurisdiction over Sibley in California would be unreasonable and constitutionally impermissible.

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*The comment is appended as Exhibit C to Carlsberg's petition.

The California Supreme Court did not say explicitly whether it was deciding the case on the basis of California law—*i.e.*, the Court's interpretation of Section 410.10—the California Constitution, the United States Constitution, or all three. Its decision was concerned primarily with the report of the California Judicial Council and with California cases on jurisdiction. Thus, it would appear that two independent grounds for the decision by the California Supreme Court were that the assertion of jurisdiction over Sibley would violate Section 410.10 and would violate the California Constitution's notions of reasonableness and due process.

It is firmly established that where a state court decision rests on adequate and independent state grounds, as here, this Court lacks jurisdiction. As held in *Herb v. Pitcairn,* 324 U.S. 117, 125, 65 S.Ct. 459, 463 (1945):

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted] The reason is so obvious that it is rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction.

Jankovich v. Indiana Toll Road Commission, 379 U.S. 487, 489, 85 S.Ct. 493, 494 (1965), quoting from an earlier decision, held:

> It is undoubtedly "the settled rule that where the judgment of the state court rests on two grounds, one of which is federal and the other

nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment."

In further amplifying this principle, *Lynch v. People of New York ex rel. Pierson,* 293 U.S. 52, 54-55, 55 S.Ct. 16, 17 (1934), held:

> It is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. [Citations omitted] Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. [Citations omitted.]

Accord, *Buck v. People of the State of California,* 343 U.S. 99, 72 S.Ct. 502 (1952); *Durley v. Mayo,* 351 U.S. 277, 76 S.Ct. 806 (1956); *Black v. Cutter Laboratories,* 351 U.S. 292, 76 S.Ct. 824 (1956).

Here, the California Supreme Court decision appears to have rested, at least in substantial part, on the grounds that jurisdiction over Sibley in California would violate Section 410.10 and the California Constitution. This is shown by the Court's detailed reference to

the California Judicial Council comment and to California case law. The California Supreme Court fully discussed what, under California law, must exist before jurisdiction over a non-resident can be deemed reasonable. Under those standards, jurisdiction over Sibley was found to be unreasonable. Because these state grounds are independent of any federal ground that might also have been relied upon and are adequate to support the judgment, this Court lacks jurisdiction in the premises.

Certainly, it does not appear *affirmatively* from the record that the California Supreme Court based its decision *solely* on its interpretation of the federal Constitution. Carlsberg has not met its burden of proving federal jurisdiction pursuant to 28 USC §1257(3) and the petition must be denied.

The Instant Petition Does Not Raise Any Issue Deserving of Consideration by This Court.

Pursuant to Rule 19(1)(a) of the Supreme Court Rules, certiorari is granted only when a state court has decided a federal question of substance not previously determined by the Supreme Court or where the state court has decided the federal question in a way probably not in accord with applicable decisions of the Supreme Court. Neither criterion is satisfied here.

The Purported Federal Question of Substance Has Been Fully Determined by This Court.

No new or novel issue has been raised by Carlsberg in its petition. Even assuming that the California Supreme Court decision was based solely upon its interpretation of the federal due process clause, the issue is one fully considered and often decided by this Court.

Pennoyer v. Neff, 95 U.S. 714 (1877), *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945), *Hanson v. Denckla,* 367 U.S. 235, 78 S.Ct. 1228 (1958), and *McGee v. International Life Ins. Co.,* 355 U.S. 220, 78 S.Ct. 199 (1957), all dealt with this issue, namely the extent to which a state can subject an out-of-state person to its jurisdiction and the minimum contacts necessary before such assertion of jurisdiction is reasonable and constitutionally permissible.

To the extent, if any, that the California Supreme Court decided this case on Fourteenth Amendment grounds, the Court applied the principles laid down by this Court in the above cases in finding that Sibley did not have sufficient minimum contacts with California to justify jurisdiction. No decision of a federal question of substance not previously determined by this Court was made.

The California Decision Was in Accord With Applicable Decisions of This Court.

Sibley's affidavit showed that he signed the guaranty *in Florida,* handed it to Peter Thun there, and had *no other contacts whatever* with the transactions alleged in the complaint. Moreover, the limited partnership agreement, the performance of which Sibley guaranteed, shows that the limited partnership that was created has its principal place of business *in Georgia* and was created to operate two mobile home parks *there.* This agreement makes no mention that Carlsberg was a resident of California or even does business there and neither the agreement nor the guaranty begin to hint that Sibley would have to perform any act in California.

There was no showing in the record that Sibley, when he signed the guaranty, intended to induce any action in California or had any reason to anticipate such action would follow. Nor did Sibley have any reason to believe that enforcement of the guaranty would be sought in California; yet, Carlsberg sought to do just that in disregard of the notions of fairness and due process guaranteed Sibley by the United States and California Constitutions.

The facts in this case, insofar as they affect Sibley, show only that he signed a guaranty *in Florida* involving an enterprise *in Georgia.* The mere fact, without more, that a California resident, Carlsberg, was the apparent beneficiary of this guaranty does not allow Carlsberg to pursue its remedies against Sibley in California. Sibley did no business in California vis-a-vis Carlsberg, nor did he ever commit any acts in California or intend to cause an effect there pursuant to the transaction alleged in the complaint.

The personal jurisdiction of California over Sibley must be found in the activities *of Sibley*—not others—and Carlsberg must show that *Sibley* was so connected with California as to satisfy the constitutional requirements of personal jurisdiction. *Hanson v. Denckla, supra; McGee v. International Life Ins. Co., supra; Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893 (1969); *Arnesen v. Raymond Lee Organization, Inc.,* 31 Cal.App.3d 991 (1973). The record here fails to adequately connect Sibley with California.

The California Supreme Court stated one of the recognized bases for jurisdiction arises when a defendant has caused an "effect" in the state by an act elsewhere. *Quattrone v. Superior Court,* 44 Cal.App.3d 296

(1975); *McGee v. International Life Ins. Co., supra.* Carlsberg's sole contention is that Sibley's signing of the guaranty in Florida caused an effect in California, namely that it caused Carlsberg, a California resident, to enter into the transaction. The true fact is, however, that Sibley's signing of the guaranty caused an effect *in Georgia,* namely that Carlsberg and the other defendants entered into an agreement to operate mobile home parks there.

The California Surpeme Court correctly stated that the mere causing of an "effect" in California is not necessarily sufficient to afford a constitutional basis for jurisdiction. The test is still whether the imposition of such jurisdiction would be unreasonable and offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington, supra.*

The California Supreme Court further correctly stated that the record fails to disclose that Sibley purposefully availed himself of the privilege of conducting business in California or of the benefits and protection of California laws as required by *Hanson v. Denckla, supra.* The record also does not indicate that Sibley would derive any economic benefit as a result of his guaranty or the transaction to which it related. Thus, the California Supreme Court concluded that Sibley's contacts with California were too minimal to make jurisdiction reasonable.

In contrast, *McGee v. International Life Ins. Co., supra,* held that the insurance company defendant was subject to suit in California *because it had affirmatively sought out a California resident and initiated a transaction with him by a communication which the defendant sent from Texas to California.* As stressed in *Hanson*

v. Denckla, supra, there was an affirmative act by the defendant in *McGee* that brought it into contact with California and made personal jurisdiction in California reasonable. The *McGee* situation must be contrasted with the facts here where Sibley did nothing more than sign the guaranty *in Florida* relating to a *Georgia* enterprise. There is no evidence in the guaranty, the limited partnership agreement, or anywhere else, that Sibley ever knew or should have known that his signing of the guaranty would require him to perform any act in California, much less to litigate any dispute in California.

Indeed, the guaranty which Sibley signed did not call for performance by *any* party in California. Rather, the limited partnership agreement and the guaranty related to the operation of mobile home parks *in Georgia.* Thus, Sibley never availed himself of the privilege of conducting any activity in California and in the absence of his having done so, the assertion of jurisdiction by California was properly found to be so unreasonable as to be constitutionally impermissible.

The California Supreme Court also held that whether a state has passed special legislation relating to the subject matter of the action is significant in determining the reasonableness of jurisdiction over an out-of-state defendant. The California court specifically referred to *McGee v. International Life Ins. Co., supra,* where jurisdiction was upheld, in part, because California had enacted special legislation manifesting an exceptional interest in regulating activities by foreign insurance companies, such as the defendant therein. Similarly, in *Quattrone v. Superior Court, supra,* jurisdiction over a nonresident defendant was upheld largely because the end result of defendant's alleged conspiratorial con-

duct was the issuance of shares of stock, a subject of special California regulation.

In this case, Carlsberg contributed to the venture its holdings of *Georgia* land so that mobile home parks could be operated *in Georgia*. The California Supreme Court correctly held that there are no aspects of this transaction which are subject to special regulation in California or in which California has otherwise manifested exceptional interest. Certainly, Georgia has a greater interest in regulating the transaction. Carlsberg is suing on a breach of contract theory in regard to the operation of a Georgia enterprise. Compared to Georgia, California has little interest, if any, in regulating the relationship among the parties, thus another reason for dismissing the action.

Conclusion.

In this case, Carlsberg insisted on having the gratuitous guaranty of a noninterested nonresident and got it. There is nothing unfair in requiring Carlsberg to go to Florida or Georgia to enforce the guaranty. The California Supreme Court fully agreed.

Respondent Harper Sibley, Jr. respectfully submits, therefore, that the Petition for Writ of Certiorari should be denied.

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